

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2018

CORAM:

THE HONOURABLE MR . JUSTICE S.VAIDYANATHAN

Criminal Appeal No.32 of 2008

Manickam

... Appellant

vs.

State of Tamil Nadu,
represented by the
Inspector of Police,
Attur Police Station,
Attur.
(Cr.No.1200/2003)

... Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment dated 26.12.2007 made in S.C.No.298 of 2006 on the file of the Sessions Judge, Mahila Court, Salem, convicting the Appellant for the offences punishable under Sections 498-A and 306 I.P.C. and sentenced to undergo 3 years R.I. and to pay a fine of Rs.1,000/-, in default to undergo 3 months R.I. for the offence under Section 498-A I.P.C. and sentenced to undergo 10 years R.I. and to pay a fine of Rs.1,000/-, in default to undergo 3 months R.I. for the offence under Section 306 I.P.C.

For Appellant : Mr.S.Karthikeyan
For Respondent : Mr.G.Ramar,
Government Advocate (Crl. Side)

* * * * *

J U D G M E N T

The Appellant is the accused in S.C.No.298 of 2006 on the file of the learned Sessions Judge, Mahila Court, Salem. He stood charged for the offences under Sections 498-A and 306 I.P.C. By judgment dated 26.12.2007, the Trial Court, convicted the Appellant for the offences under **Sections 498-A and 306 I.P.C.** and thereby sentenced the Appellant to undergo **3 years R.I. and to pay a fine of Rs.1,000/-**, in default to undergo 3 months R.I. for the offence under **Section 498-A I.P.C.** and sentenced to undergo **10 years R.I. and to pay a fine of Rs.1,000/-**, in default to undergo 3 months R.I. for the offence under **Section 306 I.P.C.** Challenging the said conviction and sentence, the Appellant/Accused is before this Court with the present Appeal.

2. The case of the prosecution, in brief, is as follows:

The deceased in this case is one Sangeetha, who is the wife of the Appellant/Accused. Marriage between the Appellant/Accused and the deceased Sangeetha was solemnized in the year 2000 and they had a daughter, viz. Roshini. The Appellant/Accused, as alleged, had illicit affair with one Sarasu. Though the Appellant's parents and his wife, Sangeetha questioned him about the said illegal affair and advised him not to continue the said

relationship, the Appellant/Accused did not heed to their words. Unable to withstand the conduct of the Appellant/Accused, who was allegedly involved in an extra-marital affair, the Appellant's wife Sangeetha committed suicide along with her 1 ½ year old daughter on 25.10.2003 around 3.30 p.m. by jumping into a Well at Morappankadu near the residence of one Periyasamy. An F.I.R. was lodged at the concerned Police Station by the father of the deceased, which set the Criminal Law in motion.

3. The Investigating Officer recorded statement of Witnesses under Section 161 Cr.P.C. On 26.10.2003, around 7.00 p.m., the Appellant/Accused was arrested and confined to judicial custody for the offence under Section 174 Cr.P.C. and subsequently offences were registered under Sections 302 and 304-B I.P.C. However, after investigation, Charge Sheet was filed under Section 306 I.P.C.

4. In order to establish the charges, the Prosecution examined 12 witnesses in all and marked 14 documents. The Defence examined one witness and marked 2 documents. However, no material objects were subjected to examination. The main witness is the father of the deceased, P.W.1, who deposed about the extra-marital affair of the Appellant/Accused with one Sarasu and the death of the deceased.

5. When the Appellant/Accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances in the evidence, he denied the same and advanced the plea of false implication in this case.

6. After analysing the evidence on record, the Trial Court convicted and sentenced the Accused as aforesaid, challenging which, he has come up with the present Appeal.

7. Learned counsel for the Appellant submitted that the materials collected by the Prosecution during investigation do not reveal the alleged commission of the offence under Section 498-A I.P.C., but the Trial Court has erroneously framed charges under Sections 498-A and 306 I.P.C. and the same has resulted in grave prejudice to the Appellant/accused. It is his contention that the Investigating Officer/P.W.12 has clearly admitted in his cross-examination that he has not examined the alleged paramour of the Appellant/accused, viz. Sarasu and one Senthil, who according to P.W.2 and P.W.3 had informed about the beating up of the deceased by the Appellant/accused.

8. In support of his case, learned counsel for the Appellant/accused has drawn the attention of this Court to the following decisions of the Apex Court:

(i) **Pinakin Mahipatray Rawal vs. State of Gujarat, CDJ 2013 SC 785**

"22. We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extra marital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide.

(ii) **K.V.Prakash Babu vs. State of Karnataka, CDJ 2016 SC 1067**

"16. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and

sensitivity. It is difficult to generalize but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.

19. Having said that we intend to make it clear that if the husband gets involved in an extra-marital affair that may not in all circumstances invite conviction under Section 306 of the IPC but definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. And we so clarify."

9. In reply, learned Government Advocate (Crl. Side) appearing for the Respondent/State submitted that the Trial Court, after going through the entire materials available on record, had rightly convicted the Appellant/accused and the same does not warrant interference by this Court.

10. Heard the learned counsel on either side and carefully examined the material evidence available on record and the decision rendered by the Trial Court.

11. The question that emerges for consideration is as to whether the conviction of the Appellant/Accused under Sections 498-A and 306 I.P.C. is legally justiciable in this context.

12. For better appreciation, it is appropriate to refer to Sections 306 I.P.C. and 498-A I.P.C. and the said provisions read as under:

“306. Abetment of suicide: If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

498A. Husband or relative of husband of a woman subjecting her to cruelty:—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet

such demand.]

13. Though, the case was originally registered under Sections 304-B and 302 I.P.C., later on, it was altered to Sections 304-B and 498-A I.P.C., as the investigation ultimately revealed the commission of offence under Section 306 I.P.C. and P.W.12-Investigating Officer filed his Final Report accordingly. Based on the said Report and believing the version of P.Ws.1 to 3, the Trial Court convicted the Appellant under Section 306 I.P.C. and also under Section 498-A I.P.C.

14. On a scrutiny of the evidence, it is seen that the Appellant's wife Sangeetha committed suicide along with her 1 ½ year old child due to the illicit affair between the Appellant and one Sarasu. Though according to P.W.2-mother of the deceased, there was dowry demand by the Appellant/Accused, no other witnesses have deposed that the Appellant/Accused harassed the deceased by demanding dowry. Barring the aforesaid, there is no whisper with regard to any kind of ill-treatment or cruel behaviour by the Appellant/Accused and the entire case proceeds on the basis that there was illicit relationship between the Appellant/Accused and the said Sarasu.

15. The evidence of P.W.7/Revenue Divisional Officer reveals that the deceased Sangeetha/wife of the Appellant was not subjected to dowry harassment and the same is evidenced in the Inquest Report, marked as Ex.P9. P.W.12 - Assistant Superintendent of Police has also clearly admitted in his cross-examination that he has not examined the alleged paramour of the Appellant/Accused, viz. Sarasu and also not examined one Senthil, who according to P.W.2 and P.W.3 had informed about the beating up of the deceased.

16. Mental cruelty which is engraved in the first limb of Section 498-A I.P.C. has nothing to do with the demand of dowry. It is associated with mental cruelty that can drive a woman to commit suicide and it depends upon the conduct of the person concerned. Mental cruelty varies from person to person, depending upon the intensity and the degree of endurance. Extra-marital relationship, per se, or as such, would not come within the ambit of Section 498-A I.P.C. In the instant case, even if the alleged illicit relationship between the Appellant/Accused and one Sarasu is proved, there is no other acceptable evidence on record to establish such high degree of mental cruelty, which has driven the wife of the Appellant to commit suicide. Hence, the

offence under Section 498-A is not attracted.

17. Section 306 I.P.C. refers to abetment of suicide. To constitute an offence under Section 306 I.P.C., the Prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the Accused abetted the commission of suicide. But, for the alleged extra marital relationship, nothing has been brought out by the Prosecution to show that the Appellant/Accused had provoked, incited or induced the wife to commit suicide. As held by the Apex Court in **Prakash Babu's** case (cited supra), extra marital relationship may not in all circumstances invite conviction under Section 306 I.P.C., but, it can definitely be a ground for divorce in a matrimonial dispute.

18. Furthermore, the substantive sentence imposed on the Appellant/Accused was suspended and the Appellant/Accused was enlarged on bail by an order of this Court dated 28.01.2008 in M.P.No.1 of 2008 in Crl.A.No.32 of 2008.

19. Also, it is represented by the learned Counsel for the Appellant that the Appellant/Accused, after being enlarged on bail, had married another woman and has three children now.

20. In view of the foregoing, the Criminal Appeal is allowed and the conviction and sentence imposed on the Appellant/Accused under Sections 306 and 498-A I.P.C. by the learned Sessions Judge, Mahila Court, Salem, on 26.12.2007 in S.C.No.298 of 2006 are set aside and the Appellant is acquitted of all the charges. Fine amount, if any, paid by the Appellant, shall be refunded to him.

29.09.2018

Index : Yes

Speaking Order : Yes

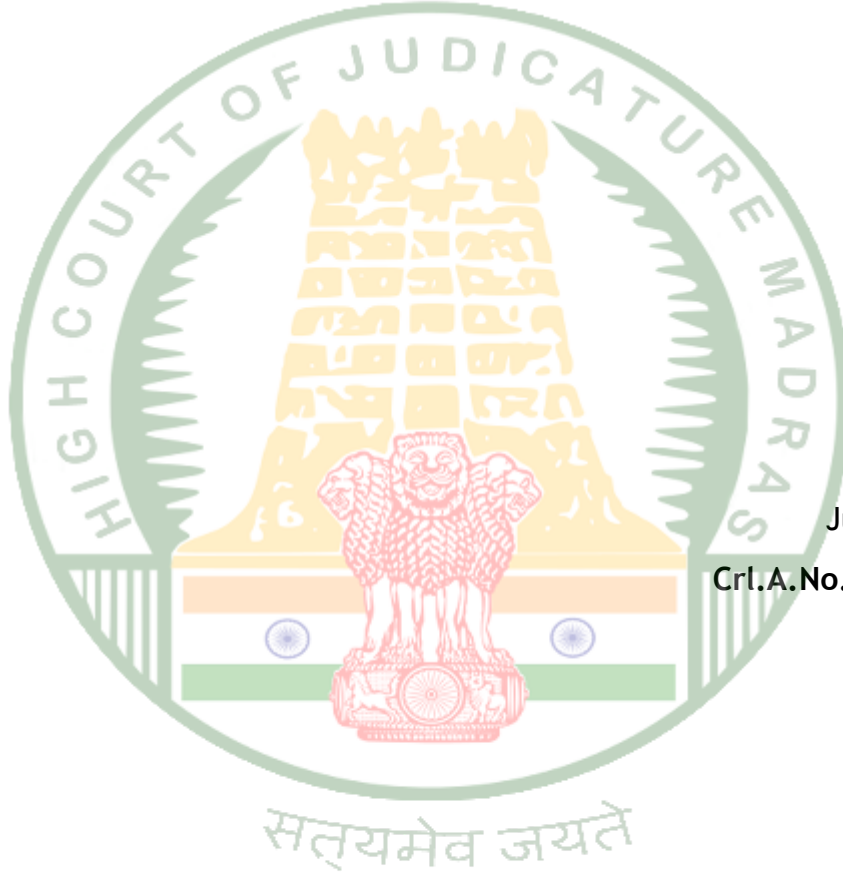
(aeb)

To

1. The Inspector of Police
Attur Police Station, Attur.
2. The Sessions Judge,
Mahila Court, Salem.
3. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

S.VAIDYANATHAN,J.

(aeb)



Judgment in
Crl.A.No.32 of 2008

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